

## REMARKS

Claims 1, 3-14, and 23-30 are pending in the application with claims 1, 27, and 30 being the independent claims. Claims 15-18 are cancelled without prejudice to or disclaimer of the subject matter therein. Claims 19-22 were previously cancelled without prejudice to or disclaimer of the subject matter therein. Claims 1, 4, 13, and 27 are amended. Claims 28-30 are newly added. Support for these claim amendments and new claims can be found in the specification, claims, and drawings as originally filed. Applicant traverses the rejections.

### Independent Claims 1 and 27

The Office Action indicated that claims 1, 3-7, 13, 14, and 23-27 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,893,889 to Harrington. This paper amends independent claims 1 and 27 in a manner that both broadens and narrows the scope of these claims. For example, the claim requirement of an “entirely” spherical ball bearing is removed from these claims as this element is neither critical to the invention nor required for patentability over the cited references. In addition, other features have been added that further define the claimed invention.

### Independent Claim 1

Independent claim 1 recites:

A disc replacement device comprising:  
a first shell;  
a second shell;  
a fulcrum disposed between the first and second shells, wherein the fulcrum is a spherical ball bearing having a substantially spherical surface; and  
a damping sleeve disposed between the first and shells,  
wherein each of the first shell and the and second shell comprises:  
a first surface adapted for articulating relative to the fulcrum, the first surface having a first surface shape different than the spherical surface; and  
a second surface adapted for coupling with the damping sleeve, the first surface being separated from the second surface.

Harrington does not disclose all these features. For example, Harrington does not disclose a disc replacement device with all the features of claim 1, including a fulcrum disposed between first and second shells, “wherein each of the first shell and the and second shell

comprises: a first surface adapted for articulating relative to the fulcrum, the first surface having a first surface shape different than the spherical surface.”

The device in the Harrington patent discloses first and second members 32, 34 and a generally spherical upper end 46 of a threaded post 45. However, the Harrington patent fails to disclose a first and second shell where “each ... comprises ... a first surface adapted for articulating relative to the fulcrum,” as recited in claim 1. The Harrington patent does not disclose two shells adapted for articulating relative to a fulcrum. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of these claims.

Independent claim 27

Independent claim 27 recites:

A disc replacement device comprising:  
a first shell having an inner surface;  
a second shell having an inner surface, the inner surface of the second shell being spaced from and facing the inner surface of the first shell;  
a spherical ball bearing having a substantially spherical surface; and  
a damping sleeve extending substantially perpendicular to the inner surface,  
wherein each of the first shell and the second shell comprises:  
a first shell surface adapted for articulating relative to the ball bearing, the first shell surface having a first surface shape different than the surface of the ball bearing; and  
a second shell surface adapted for coupling with the damping sleeve.

Harrington does not disclose all these features. For example, Harrington does not disclose a disc replacement device with all the features of claim 27, including a ball bearing disposed between first and second shells, “wherein each of the first shell and the second shell comprises: a first shell surface adapted for articulating relative to the ball bearing, the first shell surface having a first surface shape different than the surface of the ball bearing.”

The device in the Harrington patent discloses first and second members 32, 34 and a generally spherical upper end 46 of a threaded post 45. However, the Harrington patent fails to disclose first and second shells wherein “each of the first shell and the second shell comprises: a first shell surface adapted for articulating relative to the ball bearing, the first shell surface having a first surface shape different than the surface of the ball bearing,” as recited in claim 27. The Harrington patent does not disclose two shells adapted for articulating relative to a ball

bearing. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claim 27.

#### Dependent Claims

Claims 3-14 and 23-26 depend from claim 1 and also are believed to be distinct from the art of record, for example, for the same reasons discussed above with respect to claim 1. In addition, these claims also contain allowable subject matter, including, for example, amended claim 13 reciting a lubricating fluid.

#### New Claims

Claims 28-30 are new. Claims 28 and 29 depend from claim 1 and further define the shape of the damping sleeve. Claim 30 is an independent claim. Applicant respectfully requests that the Examiner consider these claims.

#### Conclusion

For at least the reasons set forth above, Applicant submits that pending claims 1, 3-14, and 23-30 are in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the outstanding rejections and issue a formal notice of allowance.

The Office Action contains characterizations of the claims and the related art to which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

Please grant any extension of time required to enter this response and charge any additional required fees to our Deposit Account No. 08-1394.

Respectfully submitted,



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I hereby certify that this correspondence is being filed with the U.S. Patent and Trademark Office via EFS-Web on <u>January 11, 2008</u> .
 Diane Sutton